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RULING FOR POST

Capital Paper Wins
in Trial, but Curb
on Series StandsText of Judge Gesell's opinion
is printed on Page 18.

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Special to The New York Times

WASHINGTON, June 21—

A Federal district judge ruled today that The Washington Post could resume publishing a series of articles about United States involvement in the Vietnam war, but the United States Court of Appeals for the District of Columbia quickly ordered a stay until 5 P.M. tomorrow.

The appellate court also ordered a hearing before the entire nine-man court at 2 P.M. tomorrow. At issue is The Post's right to continue publishing articles based on a secret study by the Defense Department.

Judge Gerhard A. Gesell, in his opinion late this afternoon, said that the Government had failed to show that continued publication of The Post's articles would present "an immediate and grave threat to the national security."

Officers of The Washington Post and attorneys for the Government had no comment pending the outcome of the appeal to the higher court.

'The Fires of Distrust'

The white-haired judge, reading his handwritten opinion to a hushed courtroom, said that "it should be obvious that the interests of the Government are inseparable from the interests of the public." "These are one and the same," he said, "and the public interest makes an insistent plea for publication."

He noted that the controversy over the war in Vietnam is of "paramount public importance." He said that antagonism had developed between the ex-

ecutive branch of Government and the press but that "censorship at this stage raises doubts and rumors that feed the fires of distrust."

The judge, who refused to grant the Government a temporary restraining order last Friday night, said that there was no basis for adjusting the First Amendment, which gives Constitutional guarantees of freedom of the press, to the desires of a foreign government that might wish to have the information suppressed.

Judge Gesell ended his opinion with a warning that "this court will not under any circumstances grant a stay." Even so, Kevin T. Maroney, the Government attorney, pleaded for a brief stay until the Government could take the case to the Court of Appeals.

Judge Gesell glanced at the clock and replied: "You have 20 minutes to get upstairs." It was then 4:40 P.M. The Appellate Court's temporary restraining order, requiring Judge Gesell to hear the Government's case on its merits, expired at 5 P.M.

The Post was represented by William R. Glendon and the Government by Kevin T. Maroney, a Deputy Assistant Attorney General in the internal security division.

Testifying for the Government in open session this morning, Dennis J. Doolin, a Deputy Assistant Secretary of Defense for international security affairs, asserted that the articles should be suppressed because they contained information bearing on current operations.

Mr. Doolin also testified on Friday in New York in the trial of the Justice Department's suit to enjoin The New York Times from publishing similar material. He did not say in open court in New York that the material affected current operational plans, but he and two other Washington officials gave secret testimony on this point.

Federal District Judge Murray I. Gurfein, however, wrote in his opinion that the testimony "did not convince this court that the publication of these historical documents would seriously breach the national security."

Judge Gesell came to much the same conclusion here. He said that revelation of the secret documents had caused no break in diplomatic relations, no armed attack on the United States, no war, no compromise of intelligence, no compromise of operational plans, and no compromise of scientific in-

Classification Explained

The Government also submitted as evidence a copy of the final report of the director of the Pentagon's study of American involvement in the war, asserting that he and 35 other researchers on the project felt that they were "writing history."

In a January, 1969, memorandum to the then Secretary of Defense, Clark M. Clifford, the director, Leslie H. Gelb, wrote that the "result was not so much a documentary history, as a history based solely on documents—checked and rechecked with ant-like diligence."

A Pentagon spokesman said tonight that Mr. Gelb's memorandum had been declassified "under existing procedures and regulations and in keeping with [Defense Department] policy on maximum release of information consistent with security" to satisfy the court's request for an explanation of the study's purpose.

The memorandum was declassified yesterday, the spokesman said, after it was determined that it was "the only evidence available as to the original purpose."

Other Government evidence in open session came from George MacClain, director of the security classification management division, who explained the top-secret classification given the study. He acknowledged that parts of it came from unclassified or nonsecret materials, including books and newspaper articles.

After Mr. Doolin's testimony, the court went into closed session, over the objections of attorneys for The Post. In a trial memorandum, they asserted that they "should not be forced to trial under handicaps which a secret trial would necessarily entail."

The judge, however, was persuaded over the weekend by the Government lawyers that the sensitive nature of the material required a secret session.

Testimony in the closed session was given by Mr. Doolin, by William B. Macomber Jr., Deputy Under Secretary of State for administration and by other Government witnesses.

The remarks of Judge Gesell in the open session this afternoon suggested that, in the closed session, the Government officials evidently emphasized that the publication of the secret documents would impair American diplomatic relations around the world.

The release of the study was evidence that the United States could not maintain the security of confidential communications from its own diplomats and from other governments, the officials reportedly testified.

The bulk of The Washington Post's evidence was presented in the form of affidavits. Its executive editor, Benjamin C. Bradlee, while not revealing the source of The Post's copy of the study, indicated that the newspaper had acquired it in three parts.

"On Monday, June 14, 1971," he wrote, "I was given the manuscript of a book on the origins and conduct of the war in Vietnam. This manuscript contains major, verbatim quotations from the classified documents contained in the materials involved in this case."

"I was informed by the authors of this manuscript that the materials involved in this case were available to the authors. This manuscript is being generally distributed to publishers with a view to publication." He did not name the authors or the title of the manuscript.

The same day, he wrote, "The Washington Post received two fragments of the materials involved in this case. One included 135 pages. The other included 41 pages."

But he wrote that "the acquisition of these materials was completely distinct from the acquisition on which The Post's June 18 and June 19 articles were based." Those were the first two articles that appeared in The Post before it was enjoined, early Saturday morning, from further publication pending today's hearing.

Mr. Bradlee also affirmed that he and other editors had "read the galley proofs of former President Johnson's book to be published in November, 1971." He asserted that "this manuscript contains extensive, verbatim quotations from classified documents involved in this case."

'Backgrounders' Cited

In a second affidavit, Mr. Bradlee set the theme that ran through several others submitted by editors and reporters of The Post. He said:

"The executive branch of the Government normally, regularly, routinely and purposefully makes classified information available to reporters and editors in Washington. This information is made available in two ways—in private conversa-